



July 7, 1997

VIA FEDERAL EXPRESS

Director, Card Technology Division  
Financial Management Service  
U. S. Department of the Treasury  
Room 526, Liberty Center  
401 14th Street, S. W.  
Washington, D.C. 20227

**Re: RIN 1510-AA59; Electronic Benefits Transfer: Selection and Designation of Financial Institutions as Financial Agents; Notice of Proposed Rulemaking.**

Dear Director Galligan:

BANC ONE CORPORATION ("BANC ONE") appreciates the opportunity to comment on the Department of the Treasury, Financial Management Service (the "Service") notice of proposed rulemaking concerning Electronic Benefits Transfer (the "Proposal"). BANC ONE, a registered bank holding company with its principal offices in Columbus, Ohio, has commercial banks located in Arizona, Colorado, Illinois, Indiana, Kentucky, Louisiana, Ohio, Oklahoma, Texas, Utah, West Virginia, and Wisconsin.

The Debt Collection Improvement Act ("DCIA") signed into law by the President on April 25, 1996 amends 31 U.S.C. 3332 to require Federal agencies to convert Federal payments, other than payments under the Internal Revenue Code, from checks to electronic funds transfers ("EFT"). The DCIA provides that, subject to the Secretary's authority to grant waivers, after January 1, 1999, all Federal payments must be made by EFT. The DCIA further provides authorization for the Treasury to issue regulations to implement the mandatory EFT requirements.

#### **I. GENERAL COMMENTS**

BANC ONE appreciates the Service's efforts to provide financial institutions with additional guidance for implementation of the mandatory EFT requirements contained in the DCIA. We generally support the goal of providing recipients of federal benefits who do not have a bank account, a safe, reliable, and economical means of accessing their federal benefits. However, BANC ONE has a number of concerns with the Proposal and requests that the Service clarify further the topics identified in the attached Issues List.

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## **II. SPECIFIC COMMENTS**

The Proposal generally defines the types of financial institutions eligible to become "Financial Agents" of the Service for the disbursement of federal benefits to unbanked recipients (Sec. 207.2). The Proposal then broadly outlines the duties of a Financial Agent, but contains virtually no detail which explains how the Service anticipates that EBT will operate effective January 1, 1999. This lack of detail raises concerns that the anticipated operation of EBT will result in significant shifting of cost and risk to financial institutions with little or no opportunity for adequate compensation. Further, we are concerned that the uncertainty resulting from this Proposal may deter financial institutions from pursuing new product or delivery initiatives targeted to the unbanked market.

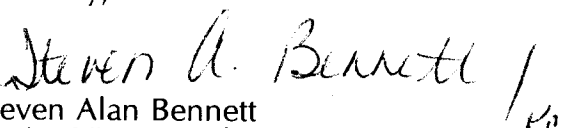
BANC ONE acknowledges that many of the issues with which we are concerned may be addressed in the Service's Invitation for Expression of Interest documents or in the Financial Agency Agreement to be executed by eligible financial institutions selected as financial agents by the Service. BANC ONE respectfully suggests that it would be more appropriate to include the details about the Service's anticipated operation of EBT in a revised proposal with the opportunity for informed public comment by all interested persons. Accordingly, BANC ONE requests that the Service consider reissuing this Proposal with more specific provisions addressing, at a minimum, the issues and concerns outlined in the attached Issues List. In doing so, we believe that the Service is more likely to obtain the voluntary participation of a greater number of eligible financial institutions in the development of an electronic delivery service for the unbanked.

## **III. CONCLUSION**

BANC ONE is committed to providing financial services to meet the needs of those unbanked recipients of federal benefits. We appreciate the Service's efforts to clarify the manner in which the mandatory EFT requirements will be implemented and the opportunity given us to comment on the Proposal. Further clarification will enable financial institutions to participate more fully and effectively with distribution of federal benefits through EFT. We hope that our comments will prove helpful.

Again, thank you for the opportunity to comment on this matter. If you should have any questions concerning BANC ONE's comments, please contact David Korman at (614) 248-9706.

Sincerely,

  
Steven Alan Bennett  
Senior Vice President  
and General Counsel

## ISSUES LIST

### A. LACK OF SPECIFIC DETAILS IN THE PROPOSAL

1. Terms governing the account established for unbanked recipients.
  - a. *Account Opening and Closing Criteria.* What criteria will be applied in determining whether or not an unbanked recipient will be eligible for an account at a particular Financial Agent? What criteria will the Service apply in determining whether or not to close a particular account? If the Service authorizes a Financial Agent to close a particular account, will Treasury then revert to disbursing benefits to that recipient by check or will another Financial Agent be required to establish an account? At what point, if any, will safety and soundness issues of the Financial Agent be implicated?
  - b. *Withdrawal Limits.* Will a Financial Agent or financial institution that deploys ATMs be required to permit unbanked recipients to withdraw funds in excess of established terminal limits or daily withdrawal limits applicable to other customers?
  - c. *Pricing.* Will a Financial Agent be permitted to price the accounts in accordance with its normal business practices or will the Service reimburse the Financial Agent for the disbursement services performed on behalf of the Service?
2. Scope of the Agency Relationship between the Service and the Financial Agent.
  - a. *Term and Termination.* What is the anticipated term of the agency relationship? How will termination or expiration of the agency affect or be affected by the existence of outstanding debit cards, ATM cards or stored value cards?
  - b. *Customer Relationship.* Will Financial Agents be precluded from offering other banking products and services to the "unbanked recipients" for whom it maintains accounts? How will such efforts affect continued eligibility for EBT? How will reclamation of payments to ineligible recipients be affected?

3. Applicability of other state and federal laws and regulations.
  - a. *Federal.* Section 207.3(a)(2) of the Proposal clearly states that the Financial Agent will be required to comply with Regulation E (See discussion below). What are the Financial Agent's responsibilities for compliance with the disclosure, advertising and other requirements of Regulation DD? What obligations under Regulation CC will be applicable?
  - b. *State.* Will additional requirements imposed under any state laws be preempted? Will offering the EBT account under the terms specified by the Service insulate a Financial Agent from any claims alleged under any state unfair or deceptive practice law?
4. Acceptance of the Benefit Security Card.
  - a. *Merchant and Financial Institution Acceptance.* Section 207.3(a)(4) requires a Financial Agent to issue each unbanked recipient a debit card bearing the Benefit Security Card service mark to enable the recipient to access the recipient's funds at ATMs and POS terminals. Will merchants and financial institutions where unbanked recipients have been executing financial transactions be required to accept the card for purchases and cash advances?
  - b. *Terminal Deployment.* Will merchants or networks be required to deploy new ATMs or POS terminals or retrofit existing terminals with new logos or technological upgrades to accept the Benefit Security Card?
  - c. *Impact on Networks.* How will issuance of the card by a Financial Agent affect the Financial Agent's commitments to its current ATM and POS networks? Will the Service seek to join or participate in existing electronic banking networks or delegate all responsibilities to the Financial Agent?
  - d. *Dispute Resolution.* If the Service elects not to participate in existing ATM or POS networks, what "chargeback" rules will govern the resolution of disputes between financial institutions over alleged EFT errors asserted by the unbanked recipient?

B. Significant Shifting of Costs and Risk of Loss

1. Regulation E Compliance. Section 207.3(a)(2) requires a Financial Agent to comply with Regulation E, yet the lack of specificity concerning the terms which will govern the account and mechanics of account opening may result in an inability to ensure full compliance. Among other

requirements, Regulation E: prohibits the unsolicited issuance of access devices (i.e. ATM or POS cards) (12 CFR 205.5); requires financial institutions to make certain specific initial disclosures before the first electronic funds transfer is made to or from a consumer's account (12 CFR 205.7); sets forth specific rules limiting a consumer's liability for unauthorized use of an access device (12 CFR 205.6); requires distribution of periodic account statements (12 CFR 205.9); and sets forth the financial institution's obligations to investigate and resolve consumer disputes (12 CFR 205.11). Section 205.15 of Regulation E currently assigns responsibility for Regulation E compliance in the context of electronic funds transfer of government benefits to the governmental agency. BANC ONE recommends that the Service be subject to the requirements of Regulation E as currently provided in 12 CFR 205.15.

2. Customer Service. Financial institutions that either accept or issue Benefit Security Cards will incur additional costs to provide adequate customer service to cardholders. If financial institutions are unable to recover these costs because of pricing limitations established by the Service, the result may be increased costs or service cutbacks being borne by other customers
3. Lost or Stolen Benefit Security Cards. One of the Service's stated objectives is to provide a safe, reliable, economical method for distributing governmental benefits to the unbanked. In the current environment, if an unbanked recipient loses a benefit check or such an instrument is stolen, the risk of loss associated with the fraudulent negotiation of that item generally is borne by the person who accepts the check. In an electronic environment, if an unbanked recipient's Benefit Security Card is lost or stolen and the recipient reports such loss or theft in a timely manner, the risk of loss is effectively shifted to the institution issuing the card under the provisions of Regulation E. If the consumer does not report the loss or theft in a timely manner, the consumer could effectively lose the entire amount of his or her deposit.
4. Impact on ATM Usage and Availability. The Background information included with the Proposal provides supplemental information clarifying that usage of the Benefit Security Card issued to unbanked recipients will be "on terms and conditions specified by Treasury" and that "no checks are issued to the recipient." Financial institutions that have deployed ATMs will see a resulting increase in transaction volume related to EBT accounts. As discussed above, it is also possible that financial institutions and merchants may have to deploy new ATMs and POS terminals or retrofit existing machines to accommodate the Benefit Security Card. If the terms and conditions applicable to usage of the Benefit Security Card limit the financial institution's ability to recover its costs, the continued widespread availability of ATMs may be impaired or the costs of such usage shifted to other users of the ATMs.

C. Potential for Deterring Product and Delivery Innovations Targeted at the Unbanked Market.

1. Voluntary Participation in EBT by Financial Institutions. BANC ONE suggests that the Service clarify in its Proposal that a decision to participate in EBT as a Financial Agent by any eligible financial institution is wholly within the discretion of such financial institution. There should be no inferences or conclusions to be drawn either from a financial institution's decision not to submit an Expression of Interest to become a Financial Agent or from an Eligible Financial Institution's failure to execute a Financial Agency Agreement.
2. Innovations by Financial Institutions to Attract the Unbanked Market Should be Encouraged. BANC ONE, like many institutions, is engaged in numerous efforts to expand its customer base and provide a broad array of financial services to its customers. BANC ONE offers a basic checking account product which we believe is ideally suited to direct deposit customers, including many of today's unbanked recipients of federal benefits. Through certain of its affiliates BANC ONE has also developed relationships with a number of institutions that currently serve unbanked recipients of federal benefits in an effort to provide banking and other financial products to this market. Some of these initiatives involve products and services which may be similar to the account the Service contemplates under the terms of the Proposal, but which may also have different pricing or other product features. BANC ONE believes these innovative developments should be promoted and recommends that the Proposal be modified to affirm that efforts to reach out to the unbanked market will be encouraged whether or not the sponsoring institution elects to participate in EBT as a Financial Agent.